

Application No.: 10/829,163Docket No.: 609-035**REMARKS**

Claim 25 has been amended to overcome the rejection thereof under 35 U.S.C. 112, paragraph 2. In addition, claims 4, 21 and 25 have been amended for clarity and method claim 29, directed to the method of using the bottle of independent claim 20, has been added.

Applicants note the indication of claims 14-17 and 21-24 containing allowable subject matter.

Applicants traverse the rejection of claims 20 and 25-28 as being anticipated by Knickerbocker, USP 5,083,683. A proper rejection under 35 U.S.C. §102 requires all claim limitations to be found in a single reference. The reference can specifically include the claim limitations or claim limitations can be inherent in the reference. However, Knickerbocker does not disclose all aspects of claim 20, upon which claims 25-28 depend. Knickerbocker does not anticipate claim 20 because Knickerbocker does not disclose a nozzle arranged so a corner of a bottle, at an intersection of the base of the bottle and the walls of the bottle, is at the lowest point of the bottle when the wall of the bottle is generally horizontally disposed and the nozzle is pointing downwardly. When nozzle 25 of Knickerbocker is pointing downwardly, the corner of the bottle where end 26 of tube 23 is located is not at the lowest point of the bottle.

Claims 25-28 are not anticipated by Knickerbocker for the same reasons advanced for claim 20, upon which claims 25-28 depend. In addition, claim 25 requires undulations on the wall of the bottle to be shaped and sized so that first and second sides of the wall include crevices for receiving the fourth finger and thumb of a user while the index finger of the user engages a trigger of the spray device. No such structure is found in the art of record. Claim 26, being dependent on claim 25, is allowable therewith.

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Applicants traverse the rejection of claims 1-12, 18 and 19 as being obvious as a result of Witt, Jr. (USP 5,518,150) and Webster (USP 3,209,954). The Office Action incorrectly alleges that Witt, Jr. discloses all features of claim 1, except for a structure at the end of the tube remote from the nozzle for strengthening. In fact, Witt, Jr. does not disclose a structure at the end of the tube remote from the spray nozzle abutting a corner of a bottle. The Examiner relies on the disclosure of "insert" 20 in Webster for the strengthening feature. However, there is no specific mention in Webster that the insert provides strengthening. The Examiner apparently is of the belief that insert 20 inherently provides the strengthening feature. However, insert 20 includes longitudinally extending openings which are such that insert 20 does not necessarily provide strengthening.

If the Examiner is stating that the quoted portion of Webster inherently provides the strengthening feature, the Examiner has not met the burden of establishing a *prima facie* case of inherency. The fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993); *In re Oelrich*, 666 F.2d 578, 581-82, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981). To establish inherency, extrinsic evidence must make clear that the missing descriptive matter is *necessarily* present in the thing described in the reference and that it would be so recognized by persons of ordinary skill in the art. Inherency may not be established by possibilities or probabilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Roberston*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). In relying upon a theory of inherency, the Examiner must provide a basis in fact or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the prior art. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (B.P.A.I. 1990). Since the Examiner has not provided a rationale or evidence to show

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that the relied on portion of Webster shows that insert 20 inherently provides strengthening, the rejection of claim 1 based on Witt, Jr. and Webster is incorrect and must be withdrawn.

Hence, the position of the Office Action that it would have been obvious to one of ordinary skill in the art to have modified Witt, Jr. to include Applicants' claimed strengthening feature is incorrect. In addition, there is no reason why one of ordinary skill in the art would have modified Witt, Jr. to include insert 20 of Webster.

Claims 2-12, 18 and 19 are patentable because they depend on claim 1, which has been incorrectly rejected as discussed. In addition, claim 2 requires the strengthening feature of claim 1 to include a substantially planar surface on the exterior of the tube at the second end of the tube, i.e., the end of the tube abutting the corner. The Office Action ignores this feature. Claim 3 depends on claim 2 and requires the planar surface to have a perimeter that is the same as the perimeter of the exterior of the wall of the tube at the second end of the tube. Again, the Office Action ignores this limitation. Claim 4 requires the exterior wall of the tube at the second end of the tube to have a circular face substantially at right angles to the length of the tube, another limitation ignored in the Office Action and not disclosed by the art of record. Claim 5 requires the exterior wall of the tube at the second end of the tube to have an elliptical face that extends along a diagonal relative to the length of the tube. The wall of the tube is required to be circular in cross section, limitations also ignored in the Office Action. The significance of the limitations of claims 3-5 is that they define the relationship between the planar surface defined in claim 2 relative to the exterior of the wall of the tube at the second end of the tube.

Claim 8, as amended, further distinguishes over the combination of Witt, Jr. and Webster by requiring the opening arrangement at the second end of the tube, at the corner of the bottle, to be generally vertically positioned at the corner when the base of the bottle is horizontally disposed.

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Claim 10 requires the corner to be at an intersection between the bottle wall and base, and further requires the tube to extend between the nozzle and corner so there is contact between the two and a substantial portion of the bottle base, a limitation not found in either Witt, Jr. or Webster, and not discussed in the Office Action. Claims 11 and 12 depend on claim 10 and are allowable therewith.

Claim 12 requires the bottle base to have a circular perimeter and the corner to be at an intersection of a portion of the bottle wall having a circular interior cross-sectional surface and the circular perimeter of the base, a feature also not found in either of the applied references and not discussed in the Office Action.

Applicants traverse the rejection of claim 13 as being obvious as a result of Witt, Jr. in view of Webster and further in view of Knickerbocker. Claim 13 requires the tube wall to have undulations shaped for causing liquid in the bottle to flow from the undulations toward the base while the bottle wall is vertically disposed and for preventing retention of liquid in the bottle when the volume of the liquid in the bottle is less than the volume of the bottle below the lowest part of the undulations. The Office Action relies on Knickerbocker to disclose such undulations. There is no specific disclosure in any of Knickerbocker, Webster or Witt, Jr. of the requirement of claim 13 for the wall to have undulations shaped for preventing retention of liquid in the bottle when the volume of the liquid in the bottle is less than the volume of the bottle below the lowest part of any of the undulations. If the Examiner is relying on inherency for this feature, he has failed to set forth any rationale to show that the Knickerbocker bottle undulations inherently have the characteristics set forth in claim 13. In this regard, the attention of the Examiner is directed to the previous discussion of inherency. Consequently, claim 13 is not rendered obvious by the combination of Witt, Jr., Webster and Knickerbocker.

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In view of the foregoing amendments and remarks, favorable reconsideration and allowance are respectfully requested and deemed in order.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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